as to any rate or regulation, which only finds that such rate or regulation is unjust, but does not accord any relief to the plaintiff; *held,* not a final judgment from which an appeal may be taken.

No sentence of law is provided in such a judgment; the subject matter of the case is not disposed of, and no final determination of the rights of the parties resulted from such a ruling. A final judgment from which an appeal may be taken is one that determines the subject matter of the controversy between the parties. *West v. Bagby,* 62 Am. Decisions, 512; *Tweedy v. Nichols,* 27 Conn. 517.

LEASE—SUBLETTING—PRESBY V. BENJAMIN, 62 N. E. 430 (N. Y.).—A covenant, in the lease of an apartment, providing that the lessee shall not sublet the apartment without the consent of the landlord, is not violated if the lessee places servants in charge as caretakers during his absence.

Covenants in leases restraining the lessee from subletting or assigning are construed with the utmost jealousy, and very easy modes have been countenanced for defeating them. *Riggs v. Pursell,* 66 N. Y. 193.

MASTER AND SERVANT—NEGLIGENCE—SCOPE OF EMPLOYMENT—ALSEVER V. MINN. AND ST. L. R. Co., 88 N. W. 841 (Ia.).—When railroad engineer blows off steam to frighten child who falls and breaks a leg, *held,* the company is liable.

The conflict of decisions shows this point to be much mooted. This case well illustrates the distinction between departure from employment of master and departure from duty connected therewith. *R. Co. v. Shields,* 24 N. E. 658; *Andrews v. R. Co.,* 77 Ia. 669. The fact that a servant does an act with a private purpose does not free master from liability. *R. Co. v. Harmon,* 47 Ill. 299; *contra, Stephenson v. S. P. Co.,* 29 Pac. 234; *Mott v. Ice Co.,* 73 N. Y. 543. The limits of scope of employment are well defined in *Cobb v. R. Co.,* 15 S. E. 878.

MASTER AND SERVANT—PERSONAL INJURIES—CONTRIBUTORY NEGLIGENCE —GALVESTON H. & S. A. RY. CO. V. SANCHEZ, 65 S. W. 893 (Texas).—Plaintiff, who was ordered to jump from a moving flat car, waited to see fellow servants do so, then followed, thereby receiving injury. *Held,* not to constitute contributory negligence.

This is apparently contrary to the general rule of law which regards as an assumed risk the act of a servant done in pursuance of a command, when he might plainly foresee the danger to life or limb. *Jones v. Railway Co.,* 31 S. W. 706 (Texas); *Stephens v. Railroad Co.,* 86 Mo. 221. But it would seem under circumstances almost similar to the above that the danger might be a question of a fact as to whether a reasonable person might have foreseen it. *Railway Co. v. Egeland,* 163 U. S. 93.

MUNICIPAL CORPORATIONS—NEGLIGENCE OF OFFICERS—LIABILITY—NICHOLSON V. DETROIT, 88 N. W. 695 (Mich.).—State statute and city charter impose on Detroit the duty of providing a hospital for smallpox. Plaintiff's intestate was engaged by the city officers to tear down a building infected with smallpox. They did not warn him of the danger and he died of the disease. *Held,* city not liable for the officer's negligence.

This decision is based on the principle that local health officers acting under State statute do not perform corporate functions but are State agents.